
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DEAN H. CHRISTENSEN,

Plaintiff,

v.

GERALD K. SMITH, et al.,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:14-cv-00784-CW-DBP

District Judge Clark Waddoups

Magistrate Judge Dustin B. Pead

The case arises out of Plaintiff's claims against Defendants for RICO conspiracy, racketeering, fraud, and defamation. The case was assigned to United States District Court Judge Clark Waddoups, who then referred it to United States Magistrate Dustin B. Pead under 28 U.S.C. § 636(b)(1)(B). (Dkt. No. 13).

Defendants filed a motion to dismiss Plaintiff's amended complaint with prejudice, asserting that Plaintiff has improperly pled the necessary elements of his RICO claims. They also ask the court to dismiss the state-law fraud and defamation claims with prejudice for lack of supplemental subject-matter jurisdiction. (Dkt. No. 33).¹ Plaintiff opposes the motion to dismiss, (Dkt. No. 34) and has filed a motion for entry of default judgment against Defendant Ray Ash (Dkt. No. 57). Plaintiff also asks the court to sanction Defendants' counsel. (*Id.*).

Judge Pead issued a Report and Recommendation, recommending the court grant the motion to dismiss but permit Plaintiff to submit a second amended complaint. (Dkt. No. 64). Judge Pead also recommended denying the motion for default judgment and for sanctions. (*Id.*). Plaintiff did not object to the Report and Recommendation, but he did file a motion for extension

¹ Defendant Rod Eson filed a motion to dismiss in which he joined in Defendants' motion. (Dkt. No. 66).

of time to file a second amended complaint. (Dkt. No. 68). Specifically, he seeks an additional 60 days from the approval of the Report and Recommendation to submit an amended complaint. (*Id.*). Plaintiff also filed a motion to amend/correct his complaint, but subsequently filed a motion to withdraw that motion. (Dkt. Nos. 71, 73).

The court has carefully considered the Report and Recommendation *de novo*, and agrees with Judge Pead's careful analysis of the issues presented. Accordingly, the Report and Recommendation is approved and adopted in its entirety. The court **GRANTS in part** and **DENIES in part** the motions to dismiss (Dkt. Nos. 33, 66) and **DENIES** the motion for default judgment and sanctions (Dkt. No. 57). Plaintiff's claims are dismissed without prejudice to refiling.

The court also **GRANTS** Plaintiff's motion to withdraw his motion to amend (Dkt. No. 73), and **DENIES** the motion to amend/correct (Dkt. No. 71) as moot. Finally, the court **GRANTS in part** and **DENIES in part** Plaintiff's motion for extension of time (Dkt. No. 68). If Plaintiff wishes to submit a renewed motion to amend, he must do so **within 45 days of this order.**

SO ORDERED this 15th day of June, 2016.

BY THE COURT:



Clark Waddoups
United States District Court Judge